



Billing Code 3410-05-P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761, 762, 764, 765, and 766

RIN 0560-AI04

Conservation Loan Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: In September 2010, the Farm Service Agency (FSA) implemented the new Conservation Loan (CL) Program authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). FSA added the CL Program provisions to the existing direct and guaranteed loan regulations. The provisions provide CL program eligibility and servicing options for the direct and guaranteed loans made through the CL Program. FSA is amending the Farm Loan Programs (FLP) direct and guaranteed loan regulations for the CL Program based on public comments received on the interim rule.

DATES: Effective Date: This rule is effective **[Insert date 60 days after the date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Connie Holman; telephone: (202) 690-0756. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

Section 5002 of the 2008 Farm Bill (Pub. L. 110-246) authorized the establishment of the CL Program by amending section 304 of the Consolidated Farm and Rural Development Act (CONACT, 7 U.S.C. 1924). CL loan funds may be used to finance the cost of carrying out a qualified conservation project. FSA published an interim rule (75 FR 54005 – 54016) on September 3, 2010, to add CL loan making and servicing provisions to the existing direct and guaranteed loan regulations. The regulations in 7 CFR parts 761, 762, 764, 765, and 766 were amended. Those changes to the regulation were effective on September 3, 2010.

Subsequently, on May 13, 2011, FSA published a notice in the Federal Register (76 FR 27986) announcing that FSA was no longer accepting direct or guaranteed applications for the CL Program because of a lack of funding. On March 7, 2012, 2012, FSA published another notice in the Federal Register (77 FR 13530-13531) announcing that we are now accepting guaranteed loan applications. However, due to a lack of program funding, direct CL applications are not being accepted at this time.

In this final rule, FSA addresses the comments received on the interim rule and the changes being made in response to those comments. The amended regulations will be used to service outstanding direct and guaranteed CLs and to process any new loan applications, subject to the availability of funding.

Fifteen commenters submitted comments on the interim rule during the 60-day comment period. Comments were received from the Independent Community Bankers of America, National Sustainable Agriculture Coalition, Forestry Service Division of

Oklahoma Department of Agriculture Food and Forestry, Natural Resources Conservation Service (NRCS), American Farmland Trust, the general public, and FSA employees. This rule was also included in the Joint Regional Tribal Consultation Strategy facilitated by USDA in seven regional consultation meetings from November 2010 through January 2011.

The comments addressed multiple provisions of the rule. Many of the comments received during the comment period were supportive. The commenters supported many of the CL provisions such as the eligible uses for CL loan funds, the requirement for applicants to obtain an approved NRCS conservation plan, the exemption of “test for credit” and “graduation” requirements from the program, loan limits, the streamlined CL application process, and the targeting of direct and guaranteed loan funds for certain producer types.

A number of issues raised in the comments resulted in changes to the regulations. The overall changes are summarized below followed by a discussion of the individual comment issues and the responses.

Summary of Amendments to the Regulations

Part 761 provides the general and administrative regulations for both direct and guaranteed loans. The regulation in 7 CFR part 762 specifies requirements and procedures that apply to making and servicing Guaranteed Loans. The regulation in 7 CFR part 763 specifies the requirements and procedures for direct loan making. FSA is making several amendments to these regulations based on the comments.

FSA is making a minor amendment to the definition of “Conservation Practice” to coincide with the definition in NRCS regulations. FSA will add a definition of “Forest Stewardship Management Plan,” make a minor amendment to the definition of “Conservation Project” to add a provision to allow conservation measures that are included in a Forest Stewardship Management Plan approved by the USDA Forest Service to be considered eligible uses of CL loan funds. Also, FSA is making conforming changes to the regulations to allow for the inclusion of a Forest Stewardship Management Plan.

FSA is changing the length of the repayment period to specify that guaranteed CLs may be scheduled over a repayment period not to exceed 30 years. This is a change from the interim rule, which limited the repayment term of guaranteed CLs to 20 years, the same repayment term as direct CLs making guaranteed CLs slightly more advantageous than direct CLs and thus reducing the potential competition between commercial lenders and FSA.

FSA is also clarifying the guaranteed loan restructuring requirement to state that lenders must ensure that the borrower remains in compliance with the approved conservation plan or the Forest Stewardship Management Plan.

FSA is making a change to specify that CLs made to purchase equipment or for real estate purposes of \$25,000 or less may be secured by a lien on chattels. This is a change from the interim rule that required FSA to take real estate as security, regardless of the loan purpose or amount, as first priority if real estate security was available. FSA further specifies that FSA may accept the best lien obtainable on real estate, without title clearance or legal service, on loans of \$25,000 or less. However, if FSA is uncertain of

the record owner or debts against real estate, a title search will be required. This change reflects the reduced risk of loss with these small loans.

Discussion of Comments and Responses

The following provides a summary of the comments received and FSA's response, including changes we are making to the regulations based on the comments.

Definitions

Comment: FSA should acknowledge the role of Forest Stewardship Management Plans in the CL Program to clarify that Nonindustrial Private Forest (NIPF) landowners are excluded from eligibility, even though forestry practices are included in 7 CFR 762.121 and 764.231 as an authorized loan purpose or use. FSA should include a specific reference to NIPF landowners.

Response: FSA is amending the regulations by adding a definition in § 761.2 of "Forest Stewardship Management Plan" and providing that any conservation practice included in the Forest Stewardship Management Plan will be an eligible use of CL funds under §§ 762.121 and 764.131.

Comment: The definition of "Conservation Practice" should be amended to coincide with the definition in NRCS regulations.

Response: FSA is amending the definition in § 761.2(b) of "Conservation Practice" based on the NRCS regulation.

Eligibility, Graduation, and Market Placement

Comment: Regardless of Section 304 of the CONACT, special notice must be made of the exception of the test for credit, family farm, and graduation requirements for the CL Program. FSA is straying from their original purpose of providing credit to those who are unable to obtain credit through other sources.

Response: FSA disagrees with the comment. Section 304 of the CONACT explicitly eliminates the test for credit and does not require that a family sized farm be involved to qualify for the CL Program. By eliminating these requirements it is evident that the objective of the CL Program is to encourage all farmers to implement conservation practices and not for the program to serve as a safety net for farmers who cannot obtain credit elsewhere. No changes have been made in response to this comment.

Comment: FSA did not have a sufficient excuse to implement a new program that will benefit farmers beyond the traditional FSA customer base.

Response: Inclusion of the CL Program in the CONACT and the subsequent allotment of funds by Congress clearly demonstrates Congressional intent to have this program implemented as authorized in the legislation.

Comment: Direct loans should only be made to family sized farms. This would maximize the number of participants in the CL Program.

Response: Section 304 of the CONTACT does not limit direct loans based on the size of the farm; therefore, no change is being made to this policy.

Comment: Add the following statement from the interim rule preamble that “This will facilitate timely implementation of conservation practices that would otherwise be

postponed due to lack of monetary resources” to the final rule eligibility requirements requiring that applicants “must demonstrate to the satisfaction of the Agency that the CL is needed to facilitate the timely implementation of conservation activities that would otherwise be postponed due to lack of monetary resources.”

Response: The purpose of the CL Program is to enhance the environment by facilitating implementation of conservation measures. Section 304 of the CONACT explicitly eliminates the test for credit and does not require a family sized farm for the CL Program. By excluding these requirements from the qualifications for a CL, it is clear that the CL Program is to serve as an inducement for implementation of conservation practices. Requiring every applicant to demonstrate need would undermine the intended purpose of the CL Program and be in conflict with the authorizing statute. Therefore, FSA is not making this change.

Comment: The blanket exemption that allows CL funds to be used to support non-eligible enterprises is a mismatch, enabling non-farm facilities to qualify for a conservation loan without a conservation plan approved by a competent official.

Response: The intent of the CL Program is to provide loans to allow farmers to address conservation needs on their land. In the interim rule, in § 764.232, FSA included language that requires CL Program participants who operate non-eligible enterprises to also be involved in agricultural production in order to be qualified for the CL Program. Program provisions also require that CL Program participants have an NRCS approved conservation plan or Forest Stewardship Management Plan to meet eligibility requirements. This eliminates the possibility of non-farm facilities without an approved

conservation plan or Forest Stewardship Management Plan qualifying for the CL Program. Therefore, FSA is not making a change in response to this comment.

Comment: FSA should limit the number of CLs awarded to applicants who are eligible for, and able to obtain, credit from a production credit association, a Federal Land Bank, or other cooperative or private sources.

Response: FSA is not making the suggested change. As authorized, the purpose of the CL Program is to encourage farmers to implement conservation measures and does not include the traditional Farm Loan Programs provision that limits eligibility to those farmers who cannot obtain credit from commercial lenders. If FSA limited the number of CLs awarded, FSA would undermine the intent of the CL provisions and purpose of the CL Program, which is to fund conservation projects.

Comment: In the absence of the family-farm eligibility requirement, FSA should require that non-family farm applicants have at least 75 percent of their assets involved in agricultural production and earn at least 75 percent of their income from agricultural activities.

Response: The exclusion of the test for credit and family farm size as eligibility requirement for the CL Program demonstrates that the purpose of the program is to fund conservation practices. Establishing a minimum asset or income level requirement would impose restrictions that are not authorized because it could be seen as a test for credit that does not apply to the CL Program. Therefore, FSA is not making the change.

Comment: Do not amend 7 CFR 762.110 to specify that market placement will not be applicable to the CL Program.

Response: Market placement is used to assist qualified existing direct loan borrowers and new direct loan applicants in obtaining a guaranteed farm loan from a commercial lender. Utilization of the Market Placement Program means the borrower or applicant may be able to obtain credit elsewhere. The CONACT exempts CL Program from the “credit elsewhere” requirement. Because FSA will not be making a “credit elsewhere” eligibility determination, there would be no reason to determine if a CL applicant or existing CL borrower should be considered for market placement. Therefore, FSA is not making the change.

Comment: FSA should not have changed the “graduation” definition in the interim rule because the 2008 Farm Bill does not prohibit FSA from requesting CL borrowers to graduate, but rather only prohibits FSA from requiring CL borrowers to refinance. Remove the change from the regulation and make all necessary conforming changes.

Response: FSA will not be making the change. Section 304(g) of the CONACT exempts the CL Program from graduation requirements established in section 333(3) of the CONACT. A CL borrower does not have to agree to obtain a loan from a commercial lender; therefore, graduation does not apply to the CL Program. Prior to the interim rule, FSA’s definition of graduation encompassed all FLP loans. To implement this exemption, CL had to be excluded from the definition. However, excluding CL from the graduation definition does not prohibit a CL borrower from paying the loan in full prior to the maturity date.

Funding

Comment: The final rule should make clear that CL funding is provided to FSA separately and that funds for the CL Program will not attach to funding for other FLP programs as the other FLP programs are solely aimed at farmers and ranchers who cannot obtain credit elsewhere and who are no larger than family sized farms.

Response: No change will be made for this comment. Each year funds are appropriated to each specific loan program. Previous appropriations bills have been worded such that funds can be transferred between programs with the Secretary's approval and Congressional notification. While this has been done in the past, it has only been done towards the end of the fiscal year and only in cases where resources will be unused and where there are shortfalls in other programs.

Comment: FSA should target 50 percent of direct and guaranteed CL funds for beginning and socially disadvantaged farmers, owner or tenants who use loans to convert to sustainable or organic agriculture production systems, and producers who use loans to build conservation structures or establish conservation practices to comply with highly erodible land conservation exemptions.

Response: FSA will not make this change. FSA is targeting 35 percent of direct and guaranteed CL funds to the priorities listed in 7 CFR 761.210, which includes all the groups listed in the comment. An additional 15 percent of direct CL funds are targeted for SDA participation rates in accordance with section 355 of the CONACT. The 15 percent is based on an estimated national average of the county wide percentages. The allocation is being kept at a national level given the small amount of funding for the

Program. This gives a total of 50 percent of CL funding targeted to the various groups as specified by the 2008 Farm Bill and section 304 of the CONACT.

Comment: Given “limited funding,” a determination should be required that the conservation practice(s) would not be able to be completed without the CL loan being extended.

Response: FSA is not making the suggested change. Implementing eligibility restrictions on the financial condition of an operation is in contradiction to the intent of the CL Program, which is to encourage all farmers to implement beneficial conservation practices.

Comment: As part of FSA’s effort to prioritize CL funding for beginning farmers, FSA should send CL Program informational materials to producers enrolled in the Conservation Reserve Program Transition Incentives Program.

Response: This is an outreach issue, and it is not necessary to make a change in the final rule. FSA will continue to utilize all available opportunities to market the CL Program.

Application Requirements

Comment: Amend 7 CFR 761.210 to require that the conservation plan demonstrate NRCS Field Office Technical Guide quality criteria for at least three resource concerns are or will be exceeded. The language in 7 CFR 761.210 establishing the priority for CL funding is ambiguous and highly problematic and the requirements for priority funding should be more explicit.

Response: The conservation plan on which the priority funding determination is based on is a product of NRCS. FSA recognizes the expertise of NRCS in this area and believes that NRCS is better equipped to make the determination as to whether the conservation practices being implemented constitute “moving toward” sustainable agriculture. FSA will, therefore, not be making the change.

Terms

Comment: There is nothing to distinguish or explain why or when a borrower would seek a guaranteed loan versus a direct loan and FSA should allow a longer term for guaranteed loans than for direct loans.

Response: FSA will make a change to the rule in §§ 762.124 and 762.145 to allow guaranteed CLs to be scheduled for repayment over a period not to exceed 30 years from the date of the note or a shorter period if necessary to assure that the loan will be adequately secured. The change will make guaranteed CLs slightly more advantageous and thereby reduce the potential competition between commercial lenders and FSA.

Streamlined CLs

Comment: The USDA Economic Research Service (ERS) reported that farm business' debt-to-asset ratio was expected to decline to 11.2 percent and debt-to-equity was expected to decline to 12.5 percent. FSA's 40 percent debt-to-asset ratio is too high and FSA should be more flexible and reserve the 40 percent ratio for family sized farms while requiring a lower ratio for larger than family sized farms.

Response: The 11.2 percent debt to asset ratio (D/A) mentioned in the comment represents all US farm debt divided by all US farm assets and is not a true representation of the median US farm's D/A ratio. A University of Minnesota study showed that 39 percent of Minnesota farms had a D/A ratio of greater than 60 percent. ERS defines a favorable financial position as positive cash flow with D/A less than or equal to 40 percent and marginal solvency as positive cash flow with D/A of greater than 40 percent, making 40 percent a reasonable parameter. FSA believes that by tying D/A ratio to the size of the farm could increase confusion and present more instances for inconsistency in interpretation. Since the 40 percent D/A ratio discussed is simply the threshold permitting reduced loan application paperwork and not for loan qualification, FSA is not making the change.

Comment: For streamlined CL eligibility, FSA should require not only a majority of the members of an entity have a FICO score of 700, but that those members represent a majority of the ownership of the entity. This would ensure that these members would be the individuals truly responsible for key decision making for the entity and could be the ones making the important decisions regarding repayment of the loan.

Response: FSA will not make this change. Members with the majority ownership of the entity are not always the decision makers, and there is no way to insure that in every case the decision makers of the entity are also the members that have the required FICO score. Tying FICO scores to the percentage of ownership could increase confusion and present more instances for inconsistency in interpretation.

Direct CLs

Comment: FSA should consider adding a requirement that an applicant for a direct loan must provide evidence that they cannot complete the conservation practice with a guaranteed loan in lieu of a direct loan.

Response: Section 304(g) of the CONACT explicitly exempts the program in FSA from the requirement of “credit elsewhere.” By excluding this requirement from the qualifications for a CL, Congress clearly signaled the intent that the CL Program serves as an inducement for implementation of conservation practices. Adopting this suggestion would undermine the purpose of the CL Program, so FSA will not make the change.

Comment: If the CL funding is being awarded to a project for which Federal, State, or local permits must be obtained, then FSA should not release CL funding until the applicant has secured all necessary permits.

Response: This change is not necessary. FSA regulation 7 CFR 1940.309 deals with environmental due diligence and addresses the requirement for applicants to obtain permits when required by local and State laws. In addition, 7 CFR 761.10(c)(2) requires that applicants obtain required State and local construction approvals and permits prior to loan closing when developing real estate.

Guaranteed CLs

Comment: The guarantee to lenders should be 90 percent because otherwise there would be diminishing incentives to utilize the guaranteed loan program and greater incentives to utilize the government funded direct loan program.

Response: FSA will not make this change since Section 304(e) of the CONACT mandates the 75 percent guarantee.

Comment: The requirement that lenders certify that a CL borrower is in compliance with the conservation plan when restructuring should be modified to require “the lender or appropriate USDA office at the discretion of the lender.” USDA officials may be in the best position to determine compliance with conservation plans. Also, USDA officials should be required to make the determination in an expedited manner.

Response: FSA reworded the text in § 762.145 to provide that for CLs the lender will “ensure that the borrower is maintaining the practice for which the CL was made,” rather than “certify” the borrower is in compliance with the approved conservation or Forest Stewardship Management Plan. This also will be included in the FSA administrative handbook to clarify the requirement.

Security and Title Clearance

Comment: As published in the interim rule, 7 CFR 764.235 was added to provide that direct CLs will be secured in accordance with 7 CFR 764.103 through 764.106. Furthermore, CLs are required to be secured first by a lien on real estate, if available and then by chattels if determined acceptable by FSA. The requirement to require real estate as security priority is too restrictive when the loan funds will be used to purchase chattels or for lower loan amounts. The requirement of taking real estate as priority also increases the closing cost expenses to borrowers when the loan amount may be relatively small and consideration should be given to the fact that many of these loans will receive significant cost share payments from NRCS that will result in very small net loan amounts. Security

requirements could be met by either real estate or chattels depending on the use of loan funds much like FSA's direct Operating Loan (OL). Loans up to \$25,000 should be secured first by chattels, with real estate taken as additional security if available.

Response: FSA will make changes to this security requirement in § 764.235 based on this comment. A lien on chattel security will be acceptable for all loans made to purchase equipment or for loans of less than \$25,000. A lien on real estate will still be required for all loans of \$25,000 or greater when funds are used for real estate purposes.

Comment: For CLs of \$25,000 or less, FSA should be able to accept the best lien obtainable without title clearance or legal service.

Response: FSA will make the change in § 764.235 to provide that for CLs of \$25,000 or less, when real estate is taken as security only a certification of ownership in real estate is required. For loans greater than \$25,000 title clearance will still be required. As a result, real estate title clearance requirements for CLs will mirror that of the Emergency Loan Program.

General Program

Comment: FSA should work with NRCS to ensure that producers seeking assistance for implementing conservation projects are fully aware of the availability of the funds through FSA's CL Program.

Response: FSA is presently working with NRCS to market the CL Program and will continue to utilize all available opportunities to market the CL Program.

Comment: There is no need to establish a new program. FSA should simply revise the existing Farm Ownership (FO) regulations to add projects eligible to be financed with FO funds.

Response: While both FO and Farm Operating (OL) loan funds may be used for conservations purposes, the requirements for these programs are more restrictive than those authorized for the CL Program. FO and OL eligibility require that applicants be unable to obtain sufficient credit elsewhere at reasonable rates and terms and be the operator of a family farm after the loan is closed. Furthermore, recipients of FO and OL direct loan assistance must agree to graduate when credit is available from other sources at reasonable rates and terms. Revising the existing FO or OL regulations would eliminate the accessibility to credit for conservation projects for FSA's non-traditional customers and, therefore, undermine the purpose of the CL Program. FSA is not making this change.

Comment: FSA should have issued the rule as a proposed rule instead of an interim rule. The objective of the CL Program did not necessitate an interim rule implementing the program immediately in lieu of a proposed rule.

Response: Many farmers who need and want to implement conservation measures on their land, often do not have the "up front" funds available to pay out-of-pocket costs not covered by many USDA conservation programs that provide only cost share assistance after the project is completed. While these conservation projects are environmentally valuable, they often contribute very little to the economic productivity of the farming operation providing little incentive for private sector lending institutions to provide financing. This often means implementation of vital conservation measures must

be postponed. This is particularly true for farmers in the livestock sector who often experience dramatic swings in profitability but may also have the most critical need to implement conservation practices. In keeping with the Presidential initiatives such as “A 21st Century Strategy for America’s Great Outdoors,” USDA determined that there was good cause to announce the new Conservation Loan and Loan Guarantee Program by publishing an interim rule that became effective immediately upon publication to allow FSA to make loans with fiscal year 2010 funds. By implementing the CL and Loan Guarantee Program this way FSA allowed the public the opportunity to comment and was also able to fund several conservation projects with fiscal year 2010 funds.

Executive Order 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and, therefore, OMB was not required to review this final rule.

Environmental Evaluation

The requirements found in 7 CFR part 1940, subpart G, must be met for the CL Program consistent with the existing direct and guaranteed loan regulations.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform.” This rule preempts State and local laws, regulations, or policies that are in conflict with this rule. This rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, all administrative remedies in accordance with 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” This Executive Order imposes requirements on the development of regulatory policies that have tribal implications or preempt tribal laws. The USDA Office of Tribal Relations has concluded that the policies contained in this rule do not have Tribal implications that preempt Tribal law. This rule was included in the Joint Regional Consultation Strategy facilitated by USDA from November 2010 through January 2011. This consolidated consultation efforts of 70 rules from the 2008 Farm Bill. USDA sent senior level agency staff to seven regional locations and consulted with Tribal leadership in each region on the rules. Once consultation meetings were completed, USDA analyzed the feedback and incorporated any appropriate changes into the regulations through rulemaking procedures. There were no comments about this rulemaking during the Tribal Consultation.

USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objective of the rule. This rule contains no Federal mandates as defined by Title II of UMRA for State, local, or Tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The changes in this rule affect the following FSA program as listed in the Catalog of Federal Domestic Assistance:

10.099 Conservation Loans

Paperwork Reduction Act

This final rule requires no changes or adds new collection to the currently approved information collections by OMB under the control numbers of 0560-0155, 0560-0233, 0560-0236, 0560-0237, 0560-0238, and 0560-0230.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 761

Loan programs-Agriculture.

7 CFR Part 762

Agriculture, Credit, Loan programs-Agriculture.

7 CFR Part 764

Agriculture, Credit, Loan programs-Agriculture.

7 CFR Part 765

Agriculture, Credit, Loan programs-Agriculture.

7 CFR Part 766

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs – Agriculture.

Accordingly, the interim rule amending 7 CFR parts 761, 762, 764, 765, and 766, which was published at 75 FR 54005-54016 on September 3, 2010, is adopted as a final rule with the following changes:

PART 761 – FARM LOAN PROGRAMS; GENERAL PROGRAM ADMINISTRATION

1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

2. Amend § 761.2(b) as follows:

- a. Revise the definitions of “conservation practice” and “conservation project” to read as set forth below, and

- b. Add the definition, in alphabetical order, for “Forest Stewardship Management Plan” to read as set forth below.

§ 761.2 Abbreviations and definitions.

* * * * *

(b) * * *

Conservation practice means a specific treatment, such as a structural or vegetative measure, or management technique, commonly used to meet specific needs in planning and implementing conservation, for which standards and specifications have been developed. Conservation practices are contained in the appropriate NRCS Field Office Technical Guide (FOTG), which is based on the National Handbook of Conservation Practices (NHCP).

Conservation project means conservation measures that address provisions of a conservation plan or Forest Stewardship Management Plan.

* * * *

Forest Stewardship Management Plan means a property-specific, long-term, multi-resource plan that addresses private landowner objectives while recommending a set and schedule of management practices designed to achieve a desired future forest condition developed and approved through the USDA Forest Service or its agent.

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PART 762 – GUARANTEED FARM LOANS

3. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301, and 7 U.S.C. 1989.

4. Revise § 762.110(a)(1)(vii) and (c)(3) to read as follows:

§ 762.110 Loan application.

(a) * * *

(1) * * *

(vii) For CL guarantees, a copy of the conservation plan or Forest Stewardship

Management Plan;

* * * *

(c) * * *

(3) For CL guarantees, a copy of the conservation plan or Forest Stewardship

Management Plan;

* * * *

5. Revise § 762.121(c) introductory text to read as follows:

§ 762.121 Loan purposes.

* * * * *

(c) CL purposes. Loan funds disbursed under a CL guarantee may be used for any conservation activities included in a conservation plan or Forestry Stewardship Management Plan including, but not limited to:

* * * * *

6. Revise § 762.124(d) to read as follows:

§ 762.124 Interest rates, terms, charges, and fees.

* * * * *

(d) CL terms. Each loan must be scheduled for repayment over a period not to exceed 30 years from the date of the note or such shorter period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

* * * * *

7. Amend § 762.145 as follows:

- a. Revise paragraph (b)(10) to read as set forth below, and
- b. Revise the second sentence of paragraph(c)(1)(iii) to read as set forth below.

§ 762.145 Restructuring guaranteed loans.

* * * * *

(b) * * *

(10) For CL, the lender must ensure that the borrower is maintaining the practice for which the CL was made.

(c) * * *

(1) * * *

(iii) * * * The maturity date cannot exceed 30 years from the date of the original note.

* * * *

PART 764 – DIRECT LOAN MAKING

8. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

9. Revise § 764.51(b)(15) to read as follows:

§ 764.51 Loan application.

* * * *

(b) * * *

(15) For CL only, a conservation plan or Forest Stewardship Management Plan as defined in § 761.2 of this chapter; and

* * * *

10. Revise § 764.231(a) introductory text to read as follows:

§ 764.231 Conservation loan uses.

(a) CL funds may be used for any conservation activities included in a conservation or Forestry Service Stewardship Management Plan, including but not limited to:

* * * *

11. Revise § 764.235 to read as follows:

§ 764.235 Security requirements.

(a) The loan must be secured in accordance with requirements established in §§ 764.103 through 764.106.

(b) Loans to purchase chattels will be secured by a first lien on chattels purchased with loan funds. Real estate may be taken as additional security if needed.

(c) Loans of \$25,000 or less for real estate purposes will be secured in the following order of priority:

(1) By a lien on chattels determined acceptable by the Agency, and then

(2) By a lien on real estate, if available and necessary. When real estate is taken as security a certification of ownership in real estate is required. Certification of ownership may be in the form of an affidavit that is signed by the applicant, names all of the record owners of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the Agency is uncertain of the record owner or debts against the real estate security, a title search is required.

(d) Loans greater than \$25,000 for real estate purposes will be secured in the following order of priority:

(1) By a lien on real estate, if available, and then

(2) By a lien on chattels, if needed and determined acceptable by the Agency.

(e) For loans greater than \$25,000 title clearance is required when real estate is taken as security.

12. Revise § 764.402(d)(1)(ii) to read as follows:

§ 764.402 Loan closing.

* * * * *

(d) * * *

(1) * * *

(ii) As provided in § 764.235 for CLs and § 764.355 for EMs;

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Signed on March 12, 2012.

Carolyn B. Cooksie,
Acting Administrator,
Farm Service Agency.

[FR Doc. 2012-6558 Filed 03/16/2012 at 8:45 am; Publication Date: 03/19/2012]